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Nos. 88-1125 and 88-1309

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JANE HODGSON, *et al.*,
Petitioners and Cross-Resondents,
v.
STATE OF MINNESOTA, *et al.*,
Respondents and Cross-Petitioners.

On Writ of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF AMICI CURIAE OF FOCUS ON THE FAMILY AND FAMILY RESEARCH COUNCIL, RACHEL ELY, MYOSHI CALLAHAN, TERESA WIBBLESMAN FANGMAN, HOLLY TRIMBLE, LINDA ROSELLI, ANN MARIE LOZINSKI, ROBERT C. WIBBLESMAN, AND AMERICAN VICTIMS OF ABORTION, IN SUPPORT OF RESPONDENTS AND CROSS-PETITIONERS

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INTEREST OF *AMICI CURIAE**

Amici **Focus on the Family** and the **Family Research Council,** representing the concerns of more than 1.7 million American families, have broad experience and interest concerning the impact of abortion on minors and on the family.

Five of the *amici* are women who have suffered severe harm because, as minors, they were allowed—indeed, encouraged—to undergo abortions without the benefit of parental guidance. **Rachel Ely** is now permanently wheelchair-bound; **Myoshi Callahan** has endured severe physical problems, including a hysterectomy; **Teresa Wibblesman Fangman, Holly Trimble,** and **Linda Roselli** each suffered severe emotional anguish and psychological turmoil. These women offer their experiences to the Court to illustrate the very real, practical effect of severing the normal parent-child relationship in the abortion context.

One of the *amici*, **Ann Marie Lozinski,** is the parent of a young woman who suffered the ultimate harm: Debra Lozinski died after two-and-a-half months in a coma, as a direct result of an in-clinic abortion performed without adequate care, and without notice to her parents. Four years later, Debra's mother is still suffering from severe depression.

Amicus **Robert C. Wibblesman,** Teresa Fangman's father, offers a parent's perspective, unique because he has also had the opportunity to help another daughter, faced with an unplanned pregnancy, avoid the pain that Teresa suffered alone.

Many of the individual *amici* are associated with *amicus* **American Victims of Abortion,** which is a national organization of persons whose lives have been adversely affected by abortion.

All of the *amici* have particular knowledge and experience concerning the impact on minors of abortion without parental consultation, which will be helpful to the Court.

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* A full description of the *Amici* appears in Appendix A. This brief is submitted with the written consent of both parties, filed with the Clerk of this Court. *Amici* are concerned with parental notification and consent issues raised in *Ohio* v. *Akron Center for Reproductive Health*, No. 88-805, and *Hodgson* v. *Minnesota*, Nos. 88-1309 and 88-1125, and thus are filing this brief in both cases.

SUMMARY OF THE ARGUMENT

Courts and state legislatures remain uncertain about whether parental consultation laws are constitutional, and if so, within what specific legal parameters. Presently, sixteen parental consultation laws have been enjoined. Only five such statutes have been found constitutional. A clear enunciation that reasonable parental notification and consent laws do not unconstitutionally limit the right to an abortion is needed to permit states to protect minors and their families. Because state legislatures are best suited to provide these protections, the Court should limit its review to whether a statute or regulation is supported by a rational relationship to legitimate state interests.

Many legitimate, if not compelling, state interests are involved in parental consultation laws, particularly when a pregnant teenager is making the difficult and traumatic abortion decision. The courts recognize at least three state interests for parental consultation laws: (1) the peculiar vulnerability of children; (2) minor's inability to make critical decisions in an informed, mature manner; and (3) the importance of the parental role in child rearing. In light of the growing body of scientific evidence about the adverse physical and psychological effects of abortion, parents and the state have an additional and heightened interest in ensuring that the pregnant adolescent is protected from rash, ill-informed or pressured decisions on this traumatic question.

The initial state and parental interest in adolescent pregnancy and abortion is to reduce or eliminate medical and psychological problems of the pregnant minor. Negative medical consequences from abortion include hemorrhage, perforated uterus, subsequent fetal malformation, cervical trauma, ectopic pregnancies, infection, menstrual disturbances, infertility, Pelvic Inflammation Disease (PID), miscarriage and high-risk prematurity in subsequent pregnancies. Since adolescents generally have immature cervixes, researchers have concluded that adverse physical health effects are more common and severe in teenage abortions. Young women who have abortions have also been found to be more predisposed to adverse outcomes in future, planned pregnancies than their sexually mature adult counterparts.

Compared to adults, adolescents appear to also have more negative emotional and psychological responses following abortion. The immediage negative psychological responses include severe guilt, anxiety, depression and psychosis. The long-term adverse psychological effects, which include denial, depression, isolation, alienation, suicide attempts and a family of psychiatric symptoms called Post Abortion Stress (PAS), appear to be more problematic and more devastating for the adolescent aborter.

Parental consultation also enhances a legitimate state interest to help adolescents make better, well-informed decisions about their pregnancy. Parents who have knowledge of a pending abortion can help their daughter assess the medical and psychological risks involved. After consultation, if she still decides to abort, they can relate important medical and psychological information to the abortionist. If adverse complications result, the parents will be aware of the cause and can give important medical information to the subsequent treating physician.

Family involvement in the abortion decision promotes important state interests of family unity and parental control in three ways: (1) it permits the parents to deal with issues underlying adolescent pregnancy; (2) it helps avoid the compounding problems of alienation, isolation and depression, which secret abortions frequently entail; and (3) it provides emotional and psychological support for whatever decision the minors make.

Parental consultation laws clearly have a rational relationship to these legitimate state interests. In addition, consultation laws with a waiting period and a judicial bypass provision cannot be said to unduly burden the minor's abortion right because parents do not have arbitrary, absolute veto power over her decision. After sixteen years, the Court should return to the constitutional principles historically employed in reviewing state health and safety laws, adopt the rational basis standard of review in the parental consultation requirements and jettison the conflicting, intricate set of abortion-related rules that are unrelated to Constitutional doctrine.

ARGUMENT

I. PARENTAL CONSULTATION PROTECTS VULNERABLE ADOLESCENTS AND FAMILIES FROM HARM, IN FURTHERANCE OF LEGITIMATE STATE INTERESTS.

The Court has a prime opportunity to clear up the muddied waters surrounding parental notification and consent which has plagued state legislatures, courts, parents, doctors and pregnant minors for the sixteen years since abortion was legalized in *Roe* v. *Wade*, 410 U.S. 113 (1973). Thirty three states have enacted statutes requiring some form of parental consultation where a minor is considering an abortion. Twenty one states require parental consent and twelve states require parental notification before a minor can obtain an induced abortion. See Appendix B, The Confused State of Parental Consultation Laws. Sixteen parental consultation laws have been enjoined by court action. *Id.* Only thirteen presently in effect have not been challenged in federal court, and only five state statutes have been found to be constitutional. *Id.* Eight Supreme Court decisions have been rendered on this issue with conflicting results. *Id.* The last parental notification case to reach this Court ended in a four to four split; and the *per curiam* decision without opinion offered little guidance to state legislatures. *See Hartigan* v. *Zbaraz*, 763 F.2d 1532 (7th Cir. 1985) *aff'd mem.* 108 S. Ct. 479 (1987). The Sixth Circuit in *Akron Center for Reproductive Health* v. *Ohio*, 854 F.2d 852 (6th Cir. 1988) ("*Akron II*") declared that [*Hartigan*] leaves the principle of law presented by the recent case . . . unsettled." *Akron II*, 854 F.2d at 861.

The effect of unsettled parental consultation law is exacerbated by the unprecedented rise in teenage pregnancies and abortion. Teenage pregnancies, which are most often unwanted, together with teenage abortion, are a national tragedy. In 1981, approximatly 1.3 million teenage pregnancies occurred—a pregnancy rate of 134 per 1000. Henshaw, Binkin, Blaine and Smith, *A Portrait of American Women Who Obtain Abortions*, 17 FAMILY PLANNING PERSPECTIVES 90-96 (1985) (hereinafter "*Portrait*"). Approximately 28% of the 1.6 million abortions each year are performed on teenagers. Centers for Disease Control, U.S. Department of Health and Human Services, Abortion Surveillance (1985). Fifteen thousand pregnancies occurred in girls under age fourteen. *Portrait* at 92. The abortion rate among teenagers has risen sharply with a 60% increase being recorded for all teenagers between 1972 and 1976, and a 120% rise for adolescents under age fifteen. Worthington, *Decision Making in Adolescent Pregnancy* in VALUES AND PUBLIC POLICY 119, 124 (G. Regier Ed., 1988) (hereinafter "Worthington"). Forty five percent (45%) of teenage pregnancies end in abortion. In most cases parents are not even told by their teenagers or notified by doctors. *Portrait* at 93; *see also* Russo, *Adolescent Abortion: The Epidemiological Content* in ADOLESCENT ABORTION: PSYCHOLOGICAL-LEGAL ISSUES 40, 49 (G. Melton Ed., 1986).

Although the legal standards surrounding parental consultation regulations are unsettled, this Court has recognized the important state interests that such laws protect:

> We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

Bellotti v. *Baird*, 443 U.S. 622, 634 (1979) ("Bellotti II"). These interests are expanded when viewed against the backdrop of potential harms to teenagers from abortion.

A. Parental Consultation Promotes Maternal Health In The Pregnant Adolescent By Reducing The Physical And Psychological Risks Of Abortion.

The decision to terminate pregnancy involves one of the most complex and difficult decisions of a woman's life. *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 67 (1976) ("Danforth"). Medical and psychological risk factors are often overlooked or unknown, and her decision involves other multiple social, economic and moral factors which are further confused by the physiological and psychological changes pro-

duced by pregnancy. Minor women, in particular, are often ill-informed about abortion and its serious ramifications and unable to make mature, rational decisions in their own best interest.

This Court in *H. L.* v. *Matheson*, 450 U.S. 398 (1981) stated:

> The medical, emotional and psychological consequences of an abortion are serious and can be long lasting; this is particularly so when the patient is immature. An adequate medical and psychological case history is important to the physician. Parents can provide medical and psychological data, refer the physician to other sources of medical history, such as family physicians, and authorize family physicians to give relevant data.

Id. at 411.

Numerous scientific studies by independent medical sources confirm the Court's point of view, concluding that induced abortion frequently results in significant, negative and often permanent physical, psychological and social effects on the pregnant woman and her family.

1. Physical Risks From Abortion.

The serious physical complications which have been associated with abortion specifically include: hemorrhaging, cervical trauma, infection, Pelvic Inflammatory Disease (PID), ectopic pregnancy, infertility and subsequent fetal malformations, miscarriages and high risk premature birth in later planned pregnancies and death. *See Amicus Brief* of Focus on the Family in *Turnock* v. *Ragsdale*, No. 88-790, Appendix, Table 1. Researchers who analyze data collected under the auspices of the Centers for Disease Control on Teen Abortion Morbidity and Mortality concluded that women under age eighteen who obtain abortions were more susceptible to physical injury than were older women: "[T]hese findings cause concern because cervical injury in initial, unplanned pregnancies may predispose young women to adverse outcomes in future planned pregnancy . . . [S]ome of the most catastrophic complications occur in teenagers." Cates, Schultz and Grimes, *Risk Associated With Teenage Abortion*, 309 NEW ENGLAND JOURNAL OF MEDICINE 621, 624 (1983). Hence, one abortion decision can impact the entire child bearing potential of a teenage patient.

One abortionist reported on his post-abortion follow up, ranging from two to twelve years, of fifty teenage mothers whose pregnancies he had aborted: "The cervix of the young teenager pregnant for the first time is invariably small and tightly closed and especially liable to damage on dilation." Russel, *Sexual Activity and Its Consequences in the Teenager*, 3 CLINICS IN OB AND GYN 683-698 (1974); *see also* J. Wilke, ABORTION QUESTIONS AND ANSWERS 108-109 (rev. 1988) (hereinafter "ABORTION QUESTIONS"). In fifty-three subsequent pregnancies, he found that six had another induced abortion, nineteen had spontaneous miscarriages, one delivered a stillborn baby at six months, and six babies died between birth and two years. Only twenty one babies survived. Two-thirds of the teenagers subsequently experienced miscarriage or high-risk premature birth of their second wanted pregnancies. *Id.*

From 1974 to 1978, a study was conducted on approximately 84,000 teen abortions performed in Canada which represented 30.9% of all legal abortions. The complications listed from that study were as follows: retained products of the conception (69%); laceration of the cervix (12%); hemorrhage (8%); infection (7%); perforation of the uterus and other complications (4%). The director of the Therapeutic Abortion Unit and the Health Division of Statistics, Canada, acknowledged that there is a high rate of complications (4.1 per 100) in adolescent abortions. Wadhera, *Legal Abortions Among Teens 1974 through 1978*, 122 CAN. MED. ASS. J. 1386-1389 (1980). One Canadian researcher noted:

> Physical and emotional damage from abortion is greater in a young girl. Adolescent abortion candidates are different from their sexually mature counterparts, and these differences contribute to high morbidity. They have immature cervixes and run the risk of difficulty, or potentially traumatic dilatation . . .

ABORTION QUESTIONS at 111-12 (1979) (quoting C. Cowell, *Problems of Adolescent Abortion*, Ortho Panel 14, Toronto General Hospital) (1975).

In 1977, over 100,000 abortion complications were reported in the United States, which is nearly a 10% morbidity rate for immediate and short term complications. D. Reardon, ABORTED WOMEN—SILENT NO MORE 93 (1987) (hereinafter "Reardon"). However, some medical experts believe that these reported morbidity rates from abortion are the "tip of the iceberg," given likely widespread, massive under reporting. *Id.* at 92, 106-109.[1]

2. Mortality Risks From Abortion.

A truly irreversible complication of teenage abortion is death of the mother. Unfortunately, tragic accounts of teenagers dying after an abortion, like the daughter of *amicus* Ann Marie Lozenski, are all too common. *See* Reardon at 109-113, and Appendix A. While statistics are difficult to obtain, it has been reported that in the United States alone, from 1972 to 1981, there were 175 maternal deaths caused by legal abortions, a figure which does not include ectopic pregnancy deaths. Like other post-abortive complications, however, deaths are also grossly underreported. According to one estimate, less than 10% of deaths from legal abortion are reported as such. HANDBOOK ON ABORTION at 80, 98-99.[2]

[1] The only information available on morbidity comes from voluntary reporting. Since abortion providers want to hide their failures and conceal the fact that legal abortion is not safe, underreporting of abortion complications is the rule rather than the exception. J. Wilke & B. Wilke, *HANDBOOK ON ABORTION* 78-80, 89 (3rd ed. 1979); *see also* Zekman & Warrick, *The Abortion Profiteers*, Chicago Sun Times, November 12, 1978 at 1, Col. 1. In Britain where reporting is much better than the United States, medical experts believe that less than 10% of abortion complications are actually reported to government health agencies. Wynn & Wynn, *Some Consequences of Induced Abortion to Children Born Subsequently*, 4 Marriage and Family Newsletter, 8-9 (1973). "Two meticulous studies in England reveal 35.7% and 36% respectively of aborted women suffer from abortion related physical complications. *Id.* at 17.

[2] Underreporting of abortion deaths and physical complications occur for primarily three reasons: (1) abortionists are seeking to protect their personal and professional reputations; (2) the existence of unfavorable records must be minimized so that abortionists can minimize the availability of damaging evidence in the event of malpractice suits; and (3) abortionists want to maintain the generally accepted myth that abortion is safe. D. Reardon, *ABORTED WOMEN SILENT NO MORE* 90 (1987).

However, even if abortionists were willing to report and the government required accurate statistics, under reporting would still occur for the following five reasons: (1) most out-patient clinics do not provide follow up examinations and thus, without a direct complaint, assume that there are no complications; (2) even if a post abortion examination is insisted upon, conditions which may develop into long range complications such as sterility or an incompetent uterus are not easily detectable without prolonged surveillance; (3) many women hide their identities when seeking abortion and may fail to return for a post abortion examination even when one is available; (4) over 60% of the women who need emergency treatment following an outpatient abortion go to a nearby hospital instead of going back to the abortionist; and (5) when women are treated for long term complications such as infertility, they may hide their past abortion experience or simply not realize that it is relevant. *Id.* at 91.

A 1974 random survey of 486 obstetricians (6% of the total 21,700 in the U.S. in 1979) about their experience with complications resulting from legal abortion revealed that: 91% treated patients for complications; 87% had to hospitalize one or more patients; and 6% reported one or more patients having died from a legal abortion. A. Saltzenberger, EVERY WOMAN HAS THE RIGHT TO KNOW THE DANGER OF LEGAL ABORTION 51 (1982) (hereinafter "EVERY WOMAN"). The Center for Disease Control admits that the reported rate of deaths due to legal abortion may be deliberately kept low through selective under reporting. *Id.*

Dr. Lester Hibbard, Chairman of Los Angeles County Medical Society, which is charged with keeping track of maternal deaths, reported that while only four abortion related deaths were officially reported in one year, he personally knew of at least four other unreported abortion-related deaths. HANDBOOK ON ABORTION at 80. Furthermore, he said that he was certain that the under-reported abortion deaths were only the "tip of the iceberg." *Id.* The Chicago Sun Times uncovered twelve unreported abortion deaths in only four abortion clinics. Zekman and Warrick, *The Abortion Profiteers*, Chicago Sun Times, Nov. 12, 1978, at 1, Col. 1.

Other countries' mortality rates from abortion strongly suggests that the United States seriously under reports abortion-related deaths. For example, Sweden's death rate for legal abortions is 39 per 100,000, Denmark's reported deaths are 30 per 100,000, Canada lists 36 per 100,000, and in one study in Britain, a fatality rate of 75 per 100,000 was found. By suspicious contrast, the United States reports less than 2 deaths per 100,000 legal abortions. Reardon at 112.[3]

3. Emotional And Psychological Harms From Abortion.

In addition to the mortality and physical risks of abortion, the risks to the emotional and psychological well being of adolescent mothers are profound. *See* Focus on the Family *Amicus Brief* in *Turnock* v. *Ragsdale*, (No. 88-790), Appendix, Table 2. "Compared with adults, adolescents appear to have somewhat more negative responses on the average following abortion." Adler & Dolcini, *Adolescent Abortion: Psychological Issues In Abortion For Adolescents*, in ADOLESCENT ABORTION: PSYCHOLOGICAL AND LEGAL ISSUES 84 (G. Melton Ed., 1986) (hereinafter "Adler & Dolcini"); Freeman, *Abortion: Subjective Attitudes and Feelings*, 10 FAMILY PLANNING PERSPECTIVES 150 (1978).

Relying on medical and psychological studies, the Court in *Matheson* observed that:

> The emotional and psychological effects of the pregnancy and abortion experience are markedly more severe in girls under eighteen than in adults. Wallerstein, Kurtz and Bardin, *Psychological Sequelae of Therapeutic Abortion in Young, Unmarried Women*, 27 ARCH. GEN. PSYCH. 828 (1972) (hereinafter "Wallerstein"); *see also* Babikian and Goldman, *A Study of Teenage Pregnancy*, 128 AM. J. PSYCH. 755 (1971) (hereinafter "*Study of Teenage Pregnancy*").

[3] The present claims for low abortion mortality rates in the United States should also be compared to experience prior to *Roe* v. *Wade* when states with permissive abortion laws were allowed to *require* reporting of legal abortion related deaths. Oregon reported 13.9 abortion deaths per 100,000 legal abortions compared to only 8.4 maternal deaths per 100,000 live births, while Maryland reported 40.5 deaths per 100,000 legal abortions compared to 23.1 maternal deaths per 100,000 live births. According to these pre-*Roe* statistics, the mortality rate for legal abortion was nearly twice as high as the overall maternal mortality rate, a statistic which has been confirmed in many foreign countries. Reardon at 111-112.

Matheson, 450 U.S. 411 n.20.

One study found that relatively more minors than older women suffered severe anxiety, acute depression, and long-term guilt following abortion. Cates, *Adolescent Abortion in the United States*, 1 J. ADOLESCENT HEALTH CARE 18 (1980), whle another study reported that nearly one third of the young women who had abortions showed moderate to severe decline in psycho-social functioning five to seven months after the abortion. Wallerstein at 830.[4] The research in that study concluded:

> [I]n the fourteen to seventeen year age span consequent symptom manifestations, even when only transient, tended to be more dramatic and more severe in this younger group . . . [o]verall it is clear that the pregnancy and abortion experience in the younger and less mature, is at considerable heightened risk, a point of potential major maturational skewing.

Wallerstein, at 832; *see also* Perez-Reyes & Falk, *Follow UP After Therapeutic Abortion in Early Adolescence*, 28 ARCH. GEN. PSYCH. 120, 124 (1973) (hereinafter "Perez-Reyes").

One of the particular difficulties for adolescents is the problem of dealing with the very real sense of loss after an abortion is performed. Horowitz, *Adolescent Mourning Reactions to Infant and Fetal Loss*, 59 SOCIAL CASE 551 (1978) (hereinafter "Horowitz"). In an extensive community based study in Denmark of 17,378 women carrying to term and 27,234 women aborting, the psychiatric hospitalization rate for teenage abor-

[4] These young women, at initial follow up, were suffering with a variety of specific symptoms of maladaptive behavior, including mild to moderate depressive episodes, a variety of new physical complaints for which medical attention had not been sought . . . difficulty in concentrating in school, withdrawal from previous social contacts, lowered self-esteem explicitly related to the pregnancy and abortion experience, a newly begun promiscuous pattern in relationships with men, and regression to more infantile modes of relationships with parents. These difficulties did not pre-date the pregnancy. Wallenstein, at 830, cited in *Matheson*, 450 U.S. at 412 n.20.

ters was 11.4 per 10,000 while only 6.2 per 10,000 for teenagers who carried the baby to term. David, Rausmussen and Holst, *Postpartum and Post Abortion Psychotic Reations*, 13 FAMILY PLANNING PERSPECTIVES 88-92 (1981). Heightened risk of teen suicide following abortion and severe cases of anniversary reaction have also been observed. Tishler, *Adolescent Suicide Attempts Following Elective Abortion: A Special Case of Anniversary Reaction*, 68 PEDIATRICS 670 (1981).

Teenage abortion may also involve a severe double loss for the adolescent, who may compensate for her first abortion by becoming pregnant, and then may decide to have another abortion. *Portrait* at 92; *see also* Teitze, *Repeat Abortions, Why More?*, 10 FAMILY PLANNING PERSPECTIVES 205, 286 (1978).[5] Many researchers and clinicians strongly believe that parental participation will solve this cycle of problems. *See* Torres, Forrest and Eisman, *Telling Parents: Clinic Policies and Adolescents Use of Family Planning and Abortion Service*, 12 FAMILY PLANNING PERSPECTIVE, 284-289 (1980) (hereinafter "*Telling Parents*"); Butler & Fujita, *Abortion Screening and Counseling: A Brief Guide for Physicians*, 50 POST GRAD MED 208, 212 (1971); Horowitz at 551.

A pregnant teenager is frequently overwhelmed by her feelings surrounding the problem pregnancy and subsequent abortion. Appellate Record at 868, *Hodgson* v. *Minnesota*, 850 F.2d 1452 (8th Cir. 1988) (Nos. 86-5423 and 86-5434) (testimony of Dr. Vincent Rue). To the extent she does not share these feelings with her parents, she becomes more isolated and alienated which in turn triggers a host of other psychological sequelae like guilt, depression and anxiety, which increase the risk of replacement pregnancies and multiple abortions. *Id.* at 868-869. However, when the "secret" pregnancy and con-

[5] One study shows that 17% of women under eighteen who had abortions were pregnant again within a year. Steinhuff, *Women Who Obtain Repeat Abortions: A Study Based On Record Lineage*, 11 Family Planning 30, 37 (1979). Another study showed that 41% of adolescents who had therapeutic abortions had resumed sexual intercourse six months later, more than two thirds of whom were then doing so without contraceptives. Perez-Reyes at 123.

templated abortion become known to her parents, her most stable and respected support, the teenager immediately reduces the psychological risks associated with keeping the "secret" and gains emotional strength and positive ideas from the family unit. Parental consultation can thus serve as an important catalyst to work through her psychological crisis. *Id.* at 867.

Adolescent aborters who avoid facing the difficulties of the abortion decision experience more psychological problems than the non-avoiders. Cohen, Laurie, Roth and Susan, *Coping With Abortion*, 10 JOURNAL OF HUMAN STRESS 140, 142 (1984). Besides the natural sounding board and emotional support which the family provides in times of crisis, parental consultation can provide significant help to promote maternal health of the pregnant teenager. J. Burtchael, RACHEL WEEPING AND OTHER ESSAYS ON ABORTION 42 (1982) (hereinafter "RACHEL WEEPING"). For example, parents can provide the abortion providers or subsequent physician treating the complications from abortion with medical and psychological history which would be critical to reducing or avoiding altogether physical and psychological risks from teenage abortions. *Matheson*, 450 U.S. at 411.

B. Parental Consultation Substantially Benefits The Minor's Decision Making Process.

There is substantial evidence that adolescents change markedly as they progress through adolescence, and differ significantly from adults, in at least five ways, in how they make decisions on whether to abort or carry the baby to full term:

(1) Adolescents consider fewer and different factors in pregnancy decisions and in potential childrearing decisions;

(2) Adolescents consider future solutions and goals less than adults;

(3) Adolescents delay their decision more than adults;

(4) Adolescents differ from adults in consideration of future consequences in hypothetical dilemmas; and

(5) Adolescents have been found to differ from adults in their ability to understand aspects of moral decisions from the viewpoint of others.

Worthington at 134-135 (citations omitted).

The foregoing differences in decision making between adolescents and adults suggest that parental involvement helps adolescents, especially younger ones, make better decisions about how to react to her pregnancy in at least five ways.

First, parental notification requires the adolescent, through the waiting period provision of parental notification laws, to take 24 to 48 hours to consider the decision to abort, rather than respond immediately to the often demand-laden situation of finding that she is pregnant while at a clinic that does abortions. One study suggests that pregnant adolescents are particularly vulnerable to immediate situational cues in making pregnancy resolution decisions. Cobliner, *Pregnancy and Single Adolescent Girls: The Role of Cognitive Functions*, 3 JOURNAL OF YOUTH AND ADOLESCENTS 17-29 (1974).

Second, notifying parents allows them to give her balance and support in the decision making. While the initial response to learning about the pregnancy may be stressful for the parents, and they may consider their own wishes and fears in addition to their daughter's, parents will generally have more experience in making decisions under emotional strain and will be more likely to carefully consider a variety of options than will the adolescents. Worthington, *The Benefits of Legislation Requiring Parental Involvement Prior to Adolescent Abortion* in VALUES AND PUBLIC POLICY 221, 226-227 (G. Regier Ed. 1988) (hereinafter *Parental Involvement*).

While the decision to abort is difficult, even for an adult woman, teenage girls are particularly subject to ambivalence and confusion regarding the abortion decision. Horowitz at 557. One study found that almost one third of young women (31.8%) changed their minds once or twice about continuing the pregnancy or having the abortion, and 18% changed their minds even more frequently. Klerman, Bracken, Jeckel and Bracken, *The Delivery-Abortion Decision Among Adolescents*

in PREGNANCY AND ADOLESCENCE 219, 227 (1982) (hereinafter "*The Delivery-Abortion Decision*"); *see also* Wallerstein at 829 (reported that nearly 60% of young women studied reported conflict regarding the abortion decision). Nearly 20% stated that a central emotional issue revolved primarily around their deception of their families and the burden of secrecy. *Id.*

Parents will supply other points of view and provide other alternatives, such as adoption, marriage to the putative father, and raising the child at home. Their impact can help broaden her understanding of the ramifications of her decision. *Parental Involvement* at 227. As this Court has recognized:

> Abortion may not be the best choice for the minor . . . Alternatives to abortion, such as marriage to the father of the child, arranging for its adoption, or assuming the responsibility of motherhood with the assured support of family may be feasible and relevant to the minor's best interests.

Bellotti II, 443 U.S. at 642-43.

Third, parents are also able to correct any misapprehensions that their daughter might have and to challenge her erroneous beliefs. Mirachek, *Counseling Adolescents with Problem Pregnancies*, 42 AMERICAN PSYCHOLOGISTS 84-88 (1987). One frequent erroneous belief that would be corrected is that parents will reject the adolescent because of her pregnancy. In fact, parents usually react less negatively than adolescents anticipate. There is substantial evidence that most parents will support their daughters during an adolescent pregnancy. Barglow, Bornstein, Etsome, Wright and Visodsky, *Some Psychiatric Aspects of Illegitimate Pregnancy During Early Adolescence*, 37 AMERICAN JOURNAL OF ORTHOPSYCHIATRY 266, 267 (1967).

After a preliminary period of disequilibrium (anger, disappointment, disgust), there appears to be a more stable problem solving and acceptance process when both the mother and daughter take steps toward resolving these problems in the pregnancy. *Parental Involvement* at 230. In numerous studies, over two-thirds of the families reported that members strongly

support each other, participate with the pregnant adolescent, and demonstrate attachment to the new child prior to birth. *Id.* In one study, young women felt that 67% of their mothers and 74% of their fathers would have negative reactions toward abortion. Among those minor women who did finally inform their parents of their decision to have an abortion, reported reaction to the news expressed by both parents were overwhelmingly positive. Few negative responses were reported. Clary, *Minor Women Obtaining Abortion: The Study of Parental Notification in Metropolitan Areas*, 72 AM. J. PUB. H. 283-284 (1982) (hereinafter "Clary").

Fourth, parents supply the real life experience in autonomy and problem solving which adolescents often lack—young women rely on less analytic approaches to the problem such as following the normative behavior of their peers in basing their decisions on romantic, unrealistic scripts. Ramsey, *Representation of a Child in Protection Proceedings: The Determination of Decision Making Capacity*, 17 FAMILY LAW QUARTERLY 315, 344-345 (1983) (hereinafter "Ramsey"):

> The ability to reason abstractly and foresee consequences which is so important making a good decision of such magnitude, [i.e., pregnancy resolution] is lacking in most teenagers.

Eisen, Zellman, Liebonitz, Chow and Evans, *Factors Discriminating Pregnancy Resolution Decisions of Unmarried Adolescents*, 108 GEN. PSYCH. MON. 69, 94 (1983). "Minors often lack the experienced perspective and judgment to avoid choices that could be detrimental to them." Clary at 284.

Fifth, parental involvement tends to moderate the emotional upheavals of adolescents which often impact heavily upon their ability to make sound judgments. "Teenagers may tend to be egocentric and to make irrational and emotional decisions about themselves and others. A particular fourteen year old may have been more capable of making a certain decision when she was younger, before the emotional upheavals of adolescence interfered with her judgments." Ramsey at 315.

This Court has recognized the significance of parents in the minor's decision making process:

> There can be little doubt that the state furthers a consitutionally permissible end by encouraging an unmarried, pregnant minor to seek the help and advice of her parents in making the very important decsion whether or not bear a child. That is a grave decision and a girl of tender years under emotional stress may be ill equipped to make it without advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at the abortion clinic.

Danforth, 428 U.S. at 91 (Stewart, J., concurring). *See Bellotti II*, 443 U.S. at 637. A consistent thread in these cases and others is a recognition of the profound significance to the minor's well being of parental participation in the abortion decision.

C. Parental Consultation Helps Protect Vulnerable, Immature Minors From Exploitation.

Pregnant teenage girls are "particularly vulnerable" to abortion clinics which offer immediate answers to an unwanted pregnancy, and to the influence of their peers and boyfriends. *See Bellotti II*, 443 U.S. at 634. "There is no logical relationship between the capacity to become pregnant and the capacity for mature judgment concerning the wisdom of an abortion." *Matheson*, 450 U.S. at 407. In a 1980 survey of abortion clinics, it was found that less than half require parental notice even for teenagers fifteen years of age or younger; and even fewer require parental notification before performing abortions on minors aged sixteen and above. *Telling Parents* at 285 (Table 1). Almost half (45%) of the 1170 teenage abortion patients interviewed admitted that their parents had no knowledge of their intended abortion. *Id.* at 289 (Table 5). Over 90% of these teenagers were living with their parents, with only 4% living with relatives or friends. *Id.* at 287.

Numerous studies reveal, however, that adolescents have a particular need for adult guidance in areas like abortion in which they have no childhood experience to guide them, E. Hurlock, ADOLESCENT DEVELOPMENT 250 (4th ed. 1973), and which create severe emotional stress and psychological pressure "to avoid or escape the problem." *Bellotti II*, 443 U.S. at 635. Benson & Stack, *Help or Hindrance: Parental*

Impact on Pregnant Teenagers' Resolution Decisions, 31 FAMILY RELATIONS 271, 279 (1982); R. Mnookin, IN THE INTEREST OF CHILDREN 158, 237-239 (1985).

The majority of abortions now are performed by strangers in unfamiliar surroundings, where minors are alone, furtive and frightened visitors subjected to assembly line abortion techniques to give them their "quick fix." *See Danforth*, 428 U.S. at 91, 92 n.2 (Stevens, J., concurring); Blum, *Impact of Parental Notification Law*, 77 AM. J. PUBLIC HEALTH 619 (1987). Dr. Edward Allred, whose chain of abortion clinics performs 60,000 abortions per year, grossing twelve million dollars annually, has stated:

> Very commonly we hear patients say they feel like they're on an assembly line. We tell them they're right. It is an assembly line . . . We're trying to be as cost effective as possible and speed is important . . . [W]e try to use the physician for his technical skill and reduce the one-on-one relationships with the patient. We usually see the patient for the first time on the operating table and then not again . . ."

"Doctors Abortion Business is Lucrative," The San Diego Union, Oct. 12, 1988, at 3A, Col. 5.

The abortionist has a direct conflict of interest—profit—when counseling a vulnerable, frightened, pregnant teenager whether to have an abortion.

The typical abortion "counselor" also has such a personal, psycho-social stake in abortion that she often cannot give meaningful, objective counsel, even if she was instructed to. Abortion counselors have promotional jobs in which they exploit the natural, centrifugal pressures that make communication between adolescents and parents difficult, and are willing to weaken whatever remains of the parent-child link of honest interaction to promote abortion.[6] RACHEL WEEPING at 41-44. According to past counselors, "at the abortion clinic you aren't really expected to present alternatives to abortion." *Id.* at 43. "Counselors are just to give the appearance of help . . . They think of themselves as company for the women . . . The counseling was more of an assurance process." Weed, *Curbing Births Not Pregnancies*, The Wall St. J. Oct. 14, 1986, at 42, Col. 4. (citing L. Francke, THE AMBIVALENCE OF ABORTION 25, 30 (1978).

[6] Family planning programs "are more efficient at convincing teens to avoid birth than to avoid pregnancy." Weed, *Curbing Births Not Pregnancies*, The Wall St. J., Oct. 14, 1986, at 36, Col. 4 (hereinafter Weed). Despite a massive, government-financed campaign that has increased the provision of family planning services to teenagers by 600% in twelve years (in 1980, 30% of all teens were involved in family a planning program), and despite predictions by family planners that the rate of pregnancy among teenagers would drop by 200—300 *pregnancies* for every 1000 teenagers involved in family-planning programs, Olsen & Weed, *Effects Of Family Planning Programs For Teenagers On Adolescent Birth and Pregnancy*, 20 FAMILY PLANNING PERSPECTIVES 153, 157-61 (1986) [hereinafter Olsen & Weed], recent research found "a net increase of about 100 pregnancies" for every 1000 teenagers using family planning services. *Id.* at 160, 151; Weed & Olsen, *Effects of Family-Planing Programs on Teenage Pregnancy—Replication And Extension Rates*, 20 FAMILY PLANNING PERSPECTIVES 173, 190 (1986) [hereinafter Weed & Olsen]. Instead of reductions of more than 150 *abortions* per 1000 teenagers using family planning services, predicted by family planners, Weed & Olsen found that the rate of abortion increased by more than 100 per 1000 teenage family planning clients. Weed at 36; Olsen & Weed, *supra* a 161-645, 67; Weed & Olsen, at 190. "Family planning is associated with higher, not lower, abortion rates." *Id.*

Many similar stories are reflected by the following teenager who obtained a "safe," legal abortion with no immediate, physical complications:

> When I was 17 I found myself in a crisis pregnancy . . . When I went to the local family planning clinic, I sought guidance and wanted to know what I could do about my situation. I wanted a helping hand. When I walked into the clinic, I trusted the nurses and doctors, and thought they were concerned about my health enough to help me make a decision, not make my decision for me.
>
> Only one solution was strongly recommended that day. When I questioned the development of my baby, I was told it wasn't a baby yet, and that it looked like a tadpole. Since that day I have learned differently . . . *I was told that abortion was simple and safe and that I could go and live the rest of my life and have children* when I was in a position to provide for them. I heard no scientific facts that day, only biased opinions. I was not told what abortion itself could do to me in the years to come, only that it was

> "safe and simple." I was not told that I would *abuse myself with alcohol, try to kill myself, develop an eating disorder, and have terrible dreams*. Worst of all, I was not told that I might never have another child. It has been 14 years since my "safe and simple" abortion and *I will never be able to have another child*.

Letter from Sue Liljenberg to Sen. Gordon Humphrey June 6, 1986 (emphasis supplied). *Amici* Focus on the Family, Family Research Council and American Victims of Abortion have received or heard of thousands of similar or worse stories of exploitation; and thus, Justice Stewart's conclusion in his concurring opinion in *Danforth* may be an understatement: "[I]t seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." *Danforth*, 428 U.S. at 91.[7]

Without the required parental notification/consent laws, pregnant adolescents who are ashamed, fearful and confused will not generally consult their parents even in the best of families as illustrated by the real life experiences of *amici* (*see* Appendix A). In one recent study of pregnant teenagers considering abortion, 71% informed a best friend, while only 37% informed mothers and 26% informed fathers. The Delivery-Abortion Decision Among Adolescents, at 219; *see also Telling Parents* at 289, Table 5. As Justice Stevens recognizes:

> If there is no parental [notice] requirement many minors will submit to the abortion procedure without even informing their parents. An assumption that the parental reaction will be hostile, disparaging or violent no doubt persuades many children to bypass parental counsel which

[7] Justice Stewart in his concurring opinion in *Danforth* further described the "counselling" exprience at abortion clinics as follows:

> "The counselling . . . occurs entirely on the day the abortion is to be performed . . . it last for two hours and takes place in groups that include both minors and adults who are strangers to one another . . . The physican takes no part in this counselling process. . . . Counselling is typically limited [only] to a description of abortion procedures, possible complications, and birth control techniques . . .

Danforth, 428 U.S. at 91-92 n.2, quoting Brief for Appellants in *Bellotti I*, O.T. 1975, No. 75-78, pp. 43-44.

> would in fact be loving, supportive and indeed, for some, indispensable. It is unrealistic, in my judgment to assume that every parent child relationship is either (a) so perfect that communication and accord will take place routinely; or (b) so imperfect that the absence of communication reflects the child's correct prediction that the parent will . . . [act] arbitrarily to further a selfish interest rather than the child's interest.

Danforth, 428 U.S. at 103-104 (Stevens, J., concurring in part and dissenting in part); *see also Matheson*, 450 U.S. at 419-20 (Powell, J., concurring) and *Matheson*, 450 U.S. at 424 (Stevens, J., concurring).

Research strongly emphasizes that adolescents' decisions regarding abortion or childbirth are significantly affected by counsel they receive from others—if not abortion clinic staff, then teenage peers or boyfriend. *See* E. Hurlock, ADOLESCENT DEVELOPMENT 75-77 (4th Ed. 1973); J. Gallagher, *MEDICAL CARE FOR THE ADOLESCENT* 243 (3rd Ed. 1976); I. Josselyn, *ADOLESCENCE* 42-43 (1971); Brittain, *Adolescent Choices and Parent-Peer Cross Pressures*, 28 AM. SOC. REV. 385 (1963). Peers are not only the most frequent source of sex information to adolescents, but they frequently are the source of misinformation about abortion. Hanson, *Abortion in Teenagers*, 21 CLIN. OBST. AND GYN. 1175, 1180 (1978). The teenager vulnerability is underscored by the studies which reveal that in over 78% of teenager abortion cases, girls reported that they had been strongly influenced by someone who encouraged abortion. Adler & Dolcini at 74.

The bottom line is that vulnerable adolescents are exploited either consciously by abortion providers or unknowingly by the teenage peers who are equally uninformed, misinformed or emotionally and experientially unable to render rational, objective advice on abortion or childbirth. Thus, parental consultation provides the people who are most interested in the ultimate well being of pregnant adolescents the opportunity to protect them against false, misleading, prejudicial or harmful advice from their abortion "counselor" and their equally uninformed peers.

D. Parental Consultation Promotes Legitimate Parental Authority And Family Unity.

1. Parental Control.

The parent-child relationship is generally outside the reach of government regulation. Accordingly, the state can only interfere with parental control of their children in exceptional cases where it is necessary to protect the health or safety of the child. *Prince* v. *Massachusetts*, 321 U.S. 158 (1944) (Prince); *Wisconsin* v. *Yoder*, 406 U.S. 205 (1972). The Court has long recognized the importance of parental control, especially in the teenage abortion context. For example, the plurality in *Bellotti II* recognized:

> [W]e cannot ignore that central to many of these theories, and deeply rooted in our nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, 'constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society. *Ginsberg* v. *New York*, 390 U.S. 629 (1968).

Bellotti II, 443 U.S. at 638-639. *Prince* v. *Massachusetts* also recognizes the primacy of parental control over their children:

> "It is cardinal with us that the custody, care and nurture of the child resides first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. The legislature could properly conclude that parents and others . . . who have the primary responsibility for children's well being are entitled to the support of law designed to aid discharge of that responsibility."
>
> *Prince*, 321 U.S. at 166.

An additional and more important justification for state deference to parental control over children is that:

> [T]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with a high duty, to recognize and prepare him for additional obligations. *Pierce* v. *Society of Sisters*, 268 U.S. 510, 535 (1925). 'The duty . . . must be read to include the inculcation of moral standards, religious beliefs and elements of good citizenship.' *Wisconsin* v. *Yoder*, 406 U.S. 205, 233 (1972).

Bellotti II 443 U.S. at 637-638.

Some legal scholars and justices have suggested that there may be a *constitutional right to parental notification and consent*.[8] Whether or not there is such a constitutional right, a state clearly has a legitimate, if not compelling, interest to encourage and promote parental authority. Notification and consent laws foster these parental rights while recognizing the historical, legal limitations of its young citizens:

> Because he may not foresee the consequence of his decisions, a minor may not make an enforceable bargain. He may not lawfully work or travel where he pleases or even attend exhibitions of constitutionallay protected adult motion pictures. Persons below a certain age may not marry without parental consent and they may not vote. . . . But even if it is the most important kind of decision a young person may ever make, that assumption merely enhances the quality of the State's interest in maximizing the probability that the decision be made correctly and with full understanding of the consequences of either alternative.

Danforth, 428 U.S. at 102-103.

Because "the most significant consequences of the abortion decision are not medical in character," *Danforth*, 428 U.S. at 103, the State unquestionably has an interest in ensuring that a teenager receive the best advice and consultation which clearly includes that from her parents. *Bellotti II*, 450 U.S. at 423.

2. Family Involvement.

Unless a family is involved, adolescent pregnancy can contribute to family estrangement and increased parent-child

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[8] The Court's opinions discussed in the text above—*Pierce*, *Yoder*, *Prince*, and *Ginsberg*—all have contributed to a line of decisions suggesting the existence of a *constitutional parental right against undue, adverse interference by the State*. *Bellotti II* 443 U.S. at 639 n.18. *See also Amicus Brief* of Concerned Woman of America in *Ohio* v. *Akron Center For Reproductive Health*, No. 88-805.

schism. *Parental Involvement* at 232. For example, researchers generally list six reasons for family involvement with adolescent pregnancies and the "abortion versus childbirth" decision:

1. The family's need to deal with its pervasive sense of failure precipitated by the pregnancy . . .

2. Family members' needs to clarify their different views about the pregnancy and the unborn baby . . .

3. The need for the adolescent and her parents to resolve any conflict existing prior to the pregnancy, especially those resulting from the pregnancy situation . . .

4. The importance of maintaining and/or improving communication in a crisis situation for the adolescent and her family . . .

5. Parents' need to maintain their relationship while they parent their daughter through the crisis of pregnancy . . .

6. Parents' and adolescent's need to resolve developmental independency-dependency issues.

Parental Involvement at 234 (citations omitted).

Failure to involve her family will exacerbate and hide the root causes for the pregnancy, intensify family disunity and increase the minors' psycho-social problems of isolation, guilt, fear and depression. *Id.* Without parental involvement legislation, those girls who opt for abortions out of a mistaken perception of their parents' reactions deprive themselves of their parents' support during their crisis—the most powerful and permanent social and family support they have—and will either: (a) erect a wall of guilt and secrecy between themselves and their parents; or (b) later reveal to their parents that they not only got pregnant but did not trust or honor their parents and made an unilateral abortion decision. Worthington at 231.

One scholar concluded that adolescent pregnancy can often result in "building family morale, intensifying family exchanges and [if childbirth is chosen] filling the empty nest." Furstenberg, *Burdens and Benefits: The Impact of Early*

Childbearing on the Family, 1980 J. SOCIAL ISSUES 36, (1980). Even if parents and daughter do not end up with the same views towards abortion versus childbirth after consultation, most parents will provide emotional and psychological support during and after their daughter's decision pertaining to the crisis pregnancy. *Parental Involvement* at 230.

In an era when the family has been rendered increasingly vulnerable to dissolution, we should not gratuitously add to the stress by enshrining in law the starkly individualistic view that a child in the making, which can be a future shared relationship of the family, is wholly and completely a 'private' matter for the teenage girl to determine. Etozioni, *The Husband's Rights in Abortion*, 12 TRIAL 56, 58 (1976).

Family involvement in decisions about abortion or bearing a child to term thus promotes increased family unity in at least four ways. First, it will permit the family to deal with some of the underlying issues to adolescent pregnancy, i.e., power struggle, rebellion, substance abuse, depression, and immaturity. Second, in families where the girl might have opted for a secret abortion, the compounding of problems (broken relationship with parents, lack of communication, distrust, alienation and isolation) can be avoided. Third, shared experiences where a mutual, well thought out decision is made by both the daughter and parents promote emotional and psychological support for whatever decision is made, whether abortion, adoption or childbirth. Finally, the parents' knowledge of an impending abortion allows the parents to communicate important medical information about the adolescent to the abortion doctor during the required waiting period, or in the case of later complications from the abortion, to the subsequent treating physician.

II. STATE NOTIFICATION AND CONSENT LAWS ARE RATIONALLY RELATED TO LEGITIMATE INTERESTS AND DO NOT "UNDLY BURDEN" A MINOR'S RIGHT TO HAVE AN ABORTION.

The federal courts' deference to state legislatures on the parental consultation question is a function of the standard of

review adopted: strict scrutiny, rational basis or some intermediate standard. "A woman's ability to choose an abortion is a species of 'liberty.'" *Thornburgh* v. *American College of Obstetricians and Gynecologists*, 476 U.S. 747, 790 (1986) (White, J., dissenting) ("*Thornburgh*") *see also Roe* v. *Wade*, 410 U.S. at 113 (Rehnquest, J., disssenting). The presence of such a liberty interest, however, ordinarily means only that state regulation affecting that liberty interest must be procedurally fair and must bear a *rational relation* to valid state objectives. *See Williamson* v. *Lee Optial Co.*, 348 U.S. 483, 486 (1955).

State regulation will only be subjected to the higher standard of strict scrutiny, if it *substantially interferes* with a fundamental constitutional right. *City of Akron* v. *Akron Center for Reproductive Health*, 462 U.S. 416, 462 (O'Connor, J., dissenting) ("*Akron I*").

Numerous other cases have adjudicated state abortion laws on the *rational basis* standard. In *Carey* v. *Population Services International*, 431 U.S. 678, 693, 696 (1977) for example, the statute was measured by whether it provided "a *rational means* for accomplishment of some *significant state policy*." In *Maher* v. *Roe*, 432 U.S. 474 (1977), *Poekler* v. *Doe*, 432 U.S. 519, 421 (1977); and *Harris* v. *McRae*, 448 U.S. 297, 325 (1980), the Court again required only a showing that Congress' authorization of "reimbursement for generally, medically necessary services generally but not for certain medically necessary abortions was *rationally* related to the legitimate government goal of encouraging childbirth." *Webster* v. *Reproductive Health Services*, 57 U.S.L.W. 5023, 5028 (U.S. June 27, 1989) (emphasis added).

Three members of the *Webster* plurality referred to the "rational basis test" and "promotion of States' interest standard" throughout the opinion, and concluded:

> It is true that the tests in question increase the expense of abortion and regulate the discretion of the physician . . . But we are satisfied that the requirement of these tests *permissibly furthers* State's interest in protecting human life and we therefore believe the statutes to be constitutional . . . The Missouri testing requirement here is *reasonably designed* to ensure . . . an end which all concede is *legitimate* . . .

Webster, 57 U.S.L.W. at 5031 (emphasis added).

While strict scrutiny and rational basis tests have generally been judicial reference points in review of state laws, the intermediate standard of "undue burden" has also arisen in the abortion context. *Akron I*, 462 U.S. at 461 and 461 n.8 (O'Connor, J., dissenting). Justice O'Connor's two-tier approach to reviewing state abortion laws acknowledges that even if the state provisions do burden the right to seek an abortion, the Court must then consider "whether this burden *reasonably relates* to legitimate state interests." *Id.* at 471 n.15 (O'Connor, J., dissenting); *see Thornburgh*, 476 U.S. at 828 (O'Connor, J., dissenting). If the regulation "unduly burdens" the protected interest, Justice O'Connor would require states to demonstrate a compelling interest in the legislation. This "second tier" undue burden has only been found in situations involving "absolute obstacles or severe limitations" on the abortion decision such, as in *Danforth*, 428 U.S. at 79, where prohibition of saline amniocentesis was completely prohibited for abortions after twelve weeks; and *Bellotti II*, 443 U.S. at 622 where parental consent without a judicial bypass procedure was considered an arbitrary, total parental veto over the minor's abortion decision. *See Akron I*, 462 U.S. at 464 (O'Connor, J. dissenting). According to this test, if an *undue burden* is found in the threshold inquiry, the Court should then decide whether a *compelling state interest* justifies the undue burden. *Id.* at 463.

The appropriate standard to review state notification and consent laws should be whether the laws are *reasonably related* to promote or further *legitimate state interests*. The countervailing protected right to abortion is "qualified," *Roe*, 410 U.S. at 154, and thus, where the state interests directly impact its ability to protects its citizens, this Court should defer to state legislative authority. In the parental consultation context, the Court has recognized many legitimate and compelling state interests: (1) to protect the mental and physical

well being of pregnant minors; (2) to promote informed, rational decision making and family unit; and (3) to protect potential human life—all of which notification and consent laws promote and permissibly further.

Even if the undue burden test is applied, notification laws with a judicial bypass procedure as in the present case should still be upheld. Unlike *Akron I*, *Danforth* or *Bellotti II*, the parental notifications here do not place "a complete prohibition on abortion in certain circumstances," *Akron I*, 462 U.s. at 429 n.11. Nor does it place an absolute and possibly arbitrary parental veto over the abortion decision. *Danforth* 428 U.S. at 74 and *Bellotti II*, 43 U.S. at 642-644. Since the laws do not unduly burden the minors' right to have an abortion, the compelling interests of the state do not have to be examined.

III. FEDERAL COURTS MUST GIVE GREAT JUDICIAL DEFERENCE TO STATE ABORTION LEGISLATION, PARTICULARLY IN MATTERS INVOLVING PARENT-CHILD RELATIONS.

In the last three abortion cases, the Court appears to recognize the dangers of judicial law making:

> The rigid *Roe* framework is hardly consistent with the notion of a Constitution cast in general terms, as ours is, and usually speaking in general principles, as our does. The key elements of the *Roe* framework—trimesters and viability—are not found in the text of the Constitution or in any place else one would expect to find a constitutional principle. Since the bounds of the inquiry are essentially indeterminate, the result has been *a web of legal rules that have become increasingly intricate, resembling a code of regulation rather than a body of constitutional doctrine* . . .

Webster, 57 U.S.L.W. at 5023 (Rehnquist, C.J. joined by White, J. and Kennedy, J.); *See Akron I*, 462 U.S. at 468-472 (O'Connor, J., dissenting); *Thornburgh*, 476 U.S. at 782-833 (Burger, C.J., White, J., and O'Connor, J., dissenting).

This Court has sailed from *Roe* into uncharted waters for sixteen years by constantly superseding legislative judgment

and "making Constitutional law in this area a virtual Procrustean bed." *Webster*, 57 U.S.L.W. at 5030.

The Court must keep in mind that:

> the appropriate forum for . . . resolution [of extremely sensitive issues like abortion] in a democracy is the legislature. We should not forget that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.

Akron I, 462 U.S. at 465 (O'Connor, J., dissenting). (citations omitted). *See Maher*, 432 U.S. at 479-480.

Dissenters in *Thornburgh*, *Akron I* and at least three justices in *Webster* appear poised to return this Court to adjudicating state abortion laws and regulations based on the correct judicial review standard of "rational basis" and to giving state legislatures greater leeway to effectuate legitimate state interests. *Thornburgh*, 476 U.S. at 796-797 (White, J., dissenting); *see Oregon* v. *Michell*, 400 U.S. 112, 206-207 (1970) (Harlan, J., concurring); *id.* at 247-48 (Brennan, J., concurring). If accomplished, state laws routinely struck down by this Court, "would be sustained." *Webster*, 57 U.S.L.W. at 5030; *Thornburgh* at 802 (White, J., dissenting); *id.* at 783 (Burger, C.J., dissenting).

Withour reference to the constitutional right to parental notification implied in *Pierce*, *Yoder*, *Prince* and *Hinsberg*, and suggested in *Bellotti II*, 443 U.S. at 639 n.18, it is clear that judicial authorities should give greater deference to state legislatures to effectuate important state interests such as *parental prerogatives* to raise their children, to participate in their medical, moral and religious decisions and to unify their families. These are not issues in which federal courts have any particular expertise or historical authority:

> Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children . . . [H]istorically it has recognized that natural bonds of affection lead parents to act in the best interests of their children.

Parham v. *J.R.*, 442 U.S. 584, 602 (1979). *See further*, *Moore* v. *City of East Cleveland*, 431 U.S. 494 (1974); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944).

In parental notification and consent cases, the Court has recognized these principles. In *Matheson*, the Court upheld parental notification because "the Constitution does not compel a state to fine tune its statutes so as to encourage or facilitate abortions. 450 U.S. at 413; *see also Akron I*, 462 U.S. at 469 (O'Connor, J., dissenting).

Bellotti I and II, *Danforth*, *Matheson* and *Ashcroft* demonstrate the legitimacy of parental consultation and waiting periods to protect immature, unemancipated teenagers having abortions. Non-abortion surgical procedures involving minors require no less. *Thornburgh*, 476 U.S. at 785 (Burger, J., dissenting) (no surgeon would perform an amputation or even an appendectomy on a fourteen old girl without the consent of a parent).

The Court in this case should exercise traditional judicial deference in the parental rights and abortion context and steer this misguided ship back into port by following channel lights which flash broad, constitutional principles for parental notification. Enunciating more intricate and complex rules for parental consultation will only continue this ill-fated voyage. The Court should return to *traditional* constitutional principles where *judicial deference* to state legislatures is practiced and state abortion laws are appropriately reviewed by their *rational relationship to legitimate state interests.*

CONCLUSION

The Court should apply the rational basis test to the state parental notification and consent law in this case and the state law should be upheld.

Respectfully submitted,

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APPENDIX

APPENDIX A

DESCRIPTION OF *AMICI*

Amicus **Focus on the Family** is a Christian, nonprofit organization that is committed to strengthening the emotional, psychological and spiritual health of families in the United States and throughout the world. Its daily radio broadcasts dealing with family concerns and interests are heard by more than one million people daily over 1300 stations. Its monthly magazine has a circulation of 1.7 million. It receives an average of more than 8000 letters daily, many of which describe the causes and results of past trauma, including the abortion experience.

Amicus **Family Research Council,** a division of Focus on the Family, is a voice for the pro-family movement in Washington, D.C., and provides policy analysis and research support for pro-family and religious groups across America. As such, it studies matters affecting the family, including the effects of abortion.

The central issue in this case—parental notification and consent for minors undergoing abortions—represents a unique intersection of the concerns of Focus on the Family and the Family Research Council. The issue of parental consultation goes to the heart of the parent-child relationship, and the proper involvement of the state in protecting that relationship from undue interference or preemption. Both Focus on the Family and the Family Research Council have significant and substantial knowledge and experience in this area that can assist this Court.

Amicus **Rachel Ely** was a seventeen year old unmarried high school student when she learned that she was pregnant. Her high school counselor recommended that she have an abortion, arranged for State funding for the abortion, and recommended a particular abortion clinic. No other alternatives were discussed. Rachel was afraid to tell her parents that she had become pregnant. Because Rachel was not aware

of any alternatives, she consented to the abortion. Had Rachel's parents known their daughter was pregnant, they would have provided her with the alternatives of keeping her child or placing the child for adoption.

After her abortion, Rachel received no discharge instructions from her physician. Several days later she developed some flu-like symptoms in her chest, which she did not associate with her abortion because she believed that any symptoms she might have as a result of a complication from an abortion would be in her pelvic area. She went to her family doctor when these symptoms became worse. She did not tell the doctor about the abortion because she did not think the symptoms were related.

Sometime later, Rachel became very sick, and her father took her to a local hospital because of her persistent flu-like symptoms. The next morning Rachel was found in her hospital bed in a comatose condition. Subsequently, it was discovered that she had developed bacterial endocarditis—a condition directly attributable to a post-abortion surgical infection. The bacterial endocarditis had caused blood clots to develop and become lodged in the vascular system of her brain, causing a stroke. When Rachel recovered from her coma, she was left a permanently wheelchair-bound hemiplegic.

Had Rachel's parents been notified of the abortion, they would have questioned the possible relationship between the abortion and Rachel's symptoms. With simple antibiotic therapy, her devastating life-long disabilities would not have occurred.

Amicus **Myoshi Callahan** was fifteen when she had an abortion without her parents' consent. To use Myoshi's words, deciding to have an abortion was like a skydiver's "free fall." Her boyfriend and she decided—in view of the fact that they'd planned on getting maried anyway—that the "solution" to the situation was to get marrried "now instead of later." However, when his parents learned of her condition their reaction was

one of total, incensed rejection. They insisted that the only way the situation could be resolved was for her to have an abortion.

Earlier, when Myoshi had informed her mother that she was pregnant, she was aware that her mother was terribly disappointed in her. She wasn't angry, she didn't reject her, but Myoshi knew that the overriding reaction was disappointment. To her young mind, having the baby would only add to her mother's disappointment, and in view of her boyfriend's parents' reaction to her pregnancy, she "free fell" into deciding on an abortion without notifying her parents.

At the clinic, she received no counselling whatsoever. As she says, what does one know at fifteen? Her "choice," according to them, was abortion. Unfamiliar with the strategy of the clinic, afraid, and to her mind, alone, she had the abortion.

As a result of the procedure, Myoshi's periods became (and continued to be) abnormally severe, and she eventually had to have a hysterectomy. Emotionally and physically, she has suffered and continues to suffer. She has since told both parents, who grieved with her—grieved not only at the lost life, but because Myoshi went through the ordeal alone, an ordeal that would have been prevented had their consent been mandatory.

Myoshi is convinced that lack of parental notification and consent abrogates a parent's rights. "After all," she says, "how better to demonstrate responsibility and love than by giving them the benefit of their (mature) advice, and in my case, withholding their consent." She has no doubt whatsoever that had their consultation for an abortion been mandatory, she would never have had an abortion.

Amici **Teresa Wibblesman Fangman, Holly Trimble,** and **Linda Roselli** are women who procured abortions as minors without their parents' knowledge. To a large extent, their abortion decisions were uninformed. In retrospect, they believe that prior notice of their abortions to their parents would have significantly altered their experiences dealing with

their problem pregnancies. The *amici* are aware of the parental notice requirement at issue in this case, and they offer their experiences to the Court to illustrate the need many young girls have for that protection in making abortion decision.

Teresa Wibblesman was sixteen years old when she learned she was pregnant. She had been raised in a Catholic home and attended parochial schools. All she knew about abortion was that it would "take care of" the problem. No one at the family planning center, where her pregnancy was diagnosed, offered her any counseling except a referral to an abortion clinic. She made her decision to abort primarily because she was afraid to tell her parents of her pregnancy; she did not want them to know she had disappointed them. Her boyfriend took her from her Ohio home to a Louisville, Kentucky abortion clinic. At the clinic she signed consent forms which were placed in front of her without explanation. She does not remember reading the forms. The only counseling she received at the clinic was a brief description of the abortion procedure using a plastic anatomy model, given to a group of seventeen girls at once.

Teresa's abortion proceeded smoothly and she suffered no known physical complications. The abortion exacted an emotional toll, however. Teresa blocked the abortion from her mind but her self-worth had plummeted. She slipped into promiscuity and drug and alcohol abuse. She began to play what she calls "car games"—closing her eyes while driving over bridges, or accelerating on the freeway and closing her eyes until fear forced her to open them again.

Five years after Teresa's abortion, her fifteen-year old sister was impregnated on a "date rape." Teresa's sister, rather than obtaining a secret abortion, went to her parents with her problem. Together, they decided that the child would be carried to term and placed for adoption. Seeing her sister's trust in her parents and their warm support for her in her crisis produced feelings of jealousy in Teresa, causing her to wish she had handled her pregnancy the same way.

Nearly six years after her abortion, Teresa consciously acknowledged that she felt tremendous guilt over the abortion. Although she was still unmarried, she determined a time when she would be fertile and deliberately became pregnant on a "one-night stand." She made adoption arrangements in Louisville. Her little girl was born on the anniversary of her abortion. Teresa took her to Louisville for adoption to "replace" the child she had aborted there.

Teresa is convinced that if she had known at the time of her abortion decision what she now knows about her parents' supportive reaction to a problem pregnancy, she would not have chosen to abort. Thus, a parental notice requirement would, in Teresa's case, have saved her from the anguish which followed a decision that turned out to have been wrong for her.

Holly Trimble was also sixteen years old when she became pregnant. She was personally opposed to abortion, but she was afraid her parents would be hurt if they knew of her pregnancy. Her boyfriend's older brother and his girlfriend persuaded her that obtaining a secret abortion was the best thing for her to do. Holly recalls that she was not in good condition to make a decision; the pregnancy made her feel ill, and she was vomiting every day. Although she was ten weeks pregnant, she believed at the time that her fetus was just a "little egg." Prior to her abortion, she asked a matronly counselor at a state family planning office if women felt badly after abortions. "No, they're usually relieved because they can go on with their lives," she was told. "Sometimes a woman is bothered if she feels the fetus move before her abortion and she thinks it's alive; but she shouldn't because it's really not." She asked the physician about possible physical complications and was told by him that an abortion was much safer than carrying the child to term.

Within a week of her abortion, Holly did begin to feel badly about it. Because the main purpose of her abortion was to hide her pregnancy from her parents, she could not talk to them about her turmoil. When *Life* magazine ran pictures of ten--

week-old fetuses, Holly saw them and became horrified at what she had done. She felt intense guilt whenever she saw a baby. Eventually she sought help from a priest and her conscience was temporarily assauged. However, she abused drugs for several years and developed an eating disorder which lasted a decade.

Nine years later, Holly had married and become pregnant. She had learned more about fetal development and was acutely aware of the new life she was carrying within her body. That awareness stirred up memories and remorse over her earlier. Her depression became so severe that she sought professional help. Her psychiatrist finally hospitalized her in the psychiatric ward of a local hospital three months after the birth of her son. Eventually she was referred to another psychiatrist who placed her on anti-depressant medication for several months. Only after careful counseling did she improve to the point where she was able to go through another pregnancy and post-partum period without debilitating depression.

Holly still looks back at her abortion decision with great regret. She believes that if she had not felt it necessary to shield her parents from knowledge of her pregnancy, she would not have obtained her bortion. She also is certain that, if she had been exposed to information about fetal development at the time of her decision, she would have chosen to carry her child to term.

Linda Roselli was fifteen when she had an abortion without the consent of her parents. She went to a Planned Parenthood clinic to have a pregnancy test. With hindsight, she says now that she was a very "unenlightened" fifteen-year-old and, based on what she had watched on television, "suspected" that she might be pregnant. The people at Planned Parenthood told her she was losing her baby and arranged her next appointment. Linda returned thinking that they were going to help her through what she thought was to be a premature birth. She felt sure her mother would help her look after the baby, once it was born.

On the morning of the abortion they dilated her, put in a "seaweed," and told her to come back in the afternoon. When she returned to the clinic in the afternoon, Linda told them that "something was wrong." She was still under the impression that what was happening was all part of having a premature baby. She refused to take the drug (she believes it was Valium) they gave her. They ignored her tears and pleas for her mother. She was then strapped to the table, a needle was inserted into her stomach, and they hooked her up to a machine that, she recalls, made a noise like a vacuum cleaner. While this was happening, the nurse held her head down, telling her "not to look." When the noise stopped, she did look. She saw the large jar, and realized that they had performed an abortion, and that her baby was dead.

Yet the fact that her baby had been aborted did not "register" in her mind, and she kept crying and screaming and asking what they had done to her baby. When she insisted that all she had wanted was a pregnancy test and (on being told that she was losing her baby) help in delivering a "premature" baby, they produced the papers she had signed—unfortunately without questioning the people at the clinic, or reading the papers for herself.

Linda's mother did not know of her abortion at the time. Linda has since learned that if she had sought her mother's permission, it would not have been given and the abortion would not have been done. She knows now that her mother would instead have helped her raise her baby.

Emotionally, Linda has suffered greatly. It took her several years to learn to live with the guilt she felt. She says she "felt unclean." It seemed to her as though she would always be sad, and that the whole world knew, and considered her to be "a pig." For many years, she would not go out with boys; she says she was afraid of men. For many years—in fact, until approximately five or six months ago—Linda would go to a Planned Parenthood clinic rather than go to their family doctor because she felt ashamed and embarrassed.

To use Linda's words, "These people at the clinics don't really care. Never once did they offer any counselling, and never once did they suggest helping me to keep the baby. Parents *must* give their consent.

Ann Maire Lozinski, Debra's mother, had absolutely no idea that her daughter was pregnant, and therefore no knowledge that Debra had decided to have an abortion. On April 11, 1985, while Debra was on Easter vacation, she went to the clinic, accompanied by her girlfriend. There, the abortion was performed without adequate care. They did not monitor Debra during the procedure. No airway was inserted, and during the surgery Debra swallowed her tongue. The attendants at the clinic were unable to restore her breathing and consciousness to normal. Debra's mother was called at work by the Director of the clinic, who informed her that her daughter was at the clinic for "minor surgery," and that she (Debra) was having "respiratory problems." They rushed Debra to the hospital, where she lay in a coma for two-and-a-half months. Debra died on June 21, 1985.

The emotional toll on the family has been immeasurable. Since that time, Mrs. Lozinski has gone downhill emotionally. She has had professional counselling, but is still depressed. She and Debra had an extremely close relationship, and she is convined that Debra's reason for deciding on an abortion was to avoid hurting her mother. Had it been mandatory for Debra to obtain parental consultation in order to have an abortion, Mrs. Lozinski is certain they would have worked it out and that neither Debra nor the baby would have been lost. The trauma of Debra's abortion and death have been, if not insurmountable, then unforgettable. Debra's nineteen-year-old brother is "very bitter." And as Debra's mother says, "the law will not allow children at school to be given an aspirin without parental consent, yet a clinic is allowed to perform an abortion on a minor without even letting the parents know, leave alone getting their consent." She is positive that had she known Debra had gone to the clinic for an abortion, they would never have

given their consent and Debra and the baby would be alive today.

Mrs. Lozinski unequivocally believes that this should be made the law of the land. Primarily it would save lives, but it would avoid, in her words "the heartaches that never goes away."

Amicus **Robert C. Wibblesman** is the father of *amicus* Teresa Wibblesman Fangman. He recalls, with deep regret, the "terrible guilt she had to carry all by herself," for the six years from the time of her abortion until he eventually learned what had happened. Recalling that period, Mr. Wibblesman says:

> I knew that she was having psychological problems . . . [b]ut I thought this was a carry over from the early death of her Mother. How wrong I was. How tough it was for her to carry the inevitable guilt of finally realizing that "I killed my baby." She carried that guilt all by herself.

Mr. Wibblesman is convined that if his consultation with his daughter had been required, "all of this could have been avoided." His experience supports that conclusion. As related in Teresa's story, Mr. Wibblesman had a second daughter who also became pregnant. Fortunately, she confided in her father and stepmother, and they provided care and support for her throughout the pregnancy. This second daughter's experience was not without pain. As Mr. Wibblesman describes it, he is "sure she still has the hurt of knowing that there is a child out there somewhere whom she loves. But she certainly doesn't have the guilt trip that Terri had to carry by herself all these years." Thus, Mr. Wibblesman can testify to the drastically different results that can occur, depending on whether or not parents are involved in this most critical decision for adolescent women.

Amicus **American Victims of Abortion** (AVA) is a national organization of persons whose lives have been adversely affected by abortions—their own or a family member's. The

objective of AVA is to provide a forum for these individuals to educate legislatures and the public about the tragic consequences of abortion for some women. Based on the experiences of AVA members who obtained abortions as minors, AVA supports legislation, such as the parental consultation statutes at issue in this case, which may protect young women from making uninformed abortion decisions.

APPENDIX B

THE CONFUSED STATE OF PARENTAL CONSULTATION LAW

1. The following twenty one states require parental consent before a minor can obtain an abortion: Alabama, Ala. Code § 26-21-3 (Supp. 1988); Alaska, Alaska Stat. § 18.16.010 (1987); Arizona, Ariz. Rev. Stat. Ann. § 36-2151 (Supp. 1987; Arkansas, Ark. Stat. Ann. § 41-2555 (Supp. 1985); California, Cal. Health & Safety Code § 25958 (Supp. 1988); Delaware, Del. Code Ann. tit. 13, § 708 (1981); Florida, Fla. Stat. Ann. § 390.001(4)(a) (West Supp. 1985); Indiana, Ind. Code Ann. § 35-1-58.5-2.5 (Burns, Supp. 1988); Kentucky, Ky. Rev. Stat. Ann. § 311-732 (1983); Louisiana, La. Rev. Stat. Ann. § 40.1299.35.5 (West, Supp. 1988); Massachusetts, Mass. Ann. Laws. Ch. 12 § 125 (Law Co-op. 1985); Mississippi, Miss. Code Ann. § 41-41-53 (1988); Missouri, Mo. Stat. § 188.028 (Vernon, Supp. 1988); North Dakota, N.D. Cent. Code § 14.02.1-03.1 (Supp. 1987); Oklahoma, Okla. Stat. Ann. tit. 63, § 1-738 (West 1984); Pennsylvania, Pa. Stat. Ann. tit 1, § 3206 (Purdon1983); Rhode Island, R.I. Gen. Laws § 23-47-6 (1985); South Dakota, S.D. Codified Laws Ann. § 34-223A-7 (1986); South Carolina S.C. Code Ann. § 44-41-30 (Law Co-op. 1985); Tennessee, Tenn. Code Ann. § 39-4-202 (1982); Washington, Wash. Rev. Code § 9.02.070 (1985). *See* Appellant's Jurisdictional Statement (J.S.) at 14, in *Ohio* v. *Akron Center For Reproductive Health*, No. 88-805 (U.S.) (Akron II).

2. The following twelve states require parental notification in the event a minor chooses to have an abortion: Georgia, Ga. Code Ann. § 24A-4401 (Supp. 1988); Idaho, Idaho Code § 18-609(6) (1988); Illinois, Ill. Ann. Stat. ch. 38, § 81-64 (Smith-Hurd Supp. 1988); Maine, Me. Rev. Stat. Ann. tit. 22 § 1595 (1980 & Supp. 1988); Maryland, Md. Health-Gen. Code Ann. § 20-103 (1987); Minnesota, Minn. Stat. Ann. § 144.343(3) (Supp. 1988); Montana, Mont. Code. Ann. § 50-20-105 (1987); Nebraska, Neb. Rev. Stat. § 28-347 (1985); Nevada, Nev. Rev. Stat. § 442.255 (1986 & Supp.

1988); Ohio, Ohio Rev. Code. Ann. § 2919.12 (Page Supp. 1985); Utah, Utah Code Ann. § 76-7-304 (1978); West Virginia, W. Va. Code § 16-2F-3 (1985). *See Akon* II, Appellant's J.S. at 14.

3. Sixteen states have had their parental consultation law stayed or enjoined. Arkansas (*Smith* v. *Bentley*, 493 F. Supp. 916 (E.D. Ark. 1980); Florida (*Scheinberg* v. *Smith*, 659 F.2d 476 (5th Cir. 1981), and *Jacksonville Clergy Consultation Serv.* v. *Martinez*, No. 88-809—CIV-J-16, 1988. U.S. Dis. Lexis 11088 (M.D. Fla., October 6, 1988); Georgia (*Planned Parenthood Ass'n of Atlanta Area, Inc.* v. *Harris*, 691 F. Supp. 1419 (N.D. Ga. 1988); Illinois, (*Zbaraz* v. *Hartigan*, 763 F.2d 1532 (7th Cir. 1985) *aff'd* mem. 108 S. Ct. 479 (1987); Indiana (*Gary-Northwest Women's Serv. Inc.* v. *Bowen*, 421 F. Supp. 734 (N.D. Ind. 1976, *aff'd*, 429 U.S. 1067 (1977); Kentucky (*Eubanks* v. *Collins*, 604 F. Supp. 141 (W.D. Ky. 1984); Maine (*Women's Community Health Center* v. *Cohen*, 477 F. Supp. 542 (D. Me. 1979); Mississippi (*Barnes* v. *Mississippi, No. J86-0458W* (stayed)); Nebraska (*Orr* v. *Knowles*, No. C.V.-81-0-301 1983 WL. 1570 (D. Neb. Sept. 19, 1983)); Nevada (*Glick* v. *McKay*, 616 F. Supp. 322 (Nev. 1985)); Ohio (*Akron Center for Reproductive Health* v. *Slaby*, 854 F.2d 852 (6th Cir. 1988) (*Akron* II)); Pennsylvania (*Planned Parenthood of Southeastern Pennsylvania* v. *Case*, 686 F. Supp. 1089 (D. S.C. 1977)); South Carolina (*Floyd* v. *Aders*, 440 F. Supp. 535 (D.S.C. 1977)); Tennessee (*Planned Parenthood of Nashville* v. *Alexander* No. 79-843-II (Tenn. Chauncery Ct. Oct. 24, 1979)); Utah (*L. R.* v. *Hanson*, No. C80-0078 J (D. Utah Feb. 8, 1980) (Utah statute unconstitutional as it applies to mature emancipated minors)); and Washington (*State* v. *Koome*, 84 Wash.2d 901, 530 F.2d 260 (1975). *See Akron II*, Appellant's J.S. at 15.

4. Only five state's parental consultation laws have passed constitutional muster. Louisiana consent state (*Margaret S.* v. *Treen*, 597 F. Supp. 636 (T.D. La. 1984); Massachusetts consent statute (*Planned Parenthood League* v. *Bellotti*, 641 F.2d 1006 (1st Cir. 1981); Missouri consent statute

(*Planned Parenthood Ass'n of Kansas City* v. *Ashcroft*, 462 U.S. 476 (1983); Minnesota notice statute (*Hodgson* v. *Minnesota*, 853 F.2d 1452 (8th Cir. 1988) *(en banc);* Utah notice statute (*H. L.* v. *Matheson, 450 U.S. 398 (1981) (constitutional as it applied to "immature" minors). See* Akron II, Appellant's J.S. at 15.

5. The following eight decisions on parental consultation have been rendereed by the U.S. Supreme Court with conflicting results. *Planned Parenthood* v. *Danforth*, 428 U.S. 82 (1976) (no blanket parental consent requirement); *Bellotti* v. *Baird I*, 428 U.S. 132 (1976) (Abstained and certified nine questions to State Supreme Court); *Bellotti* v. *Baird II*, 443 U.S. 622 (1979) (declined to equate notification requirements with consent requirements, but required a judicial bypass alternative in parental consent laws); *H. L.* v. *Matheson*, 450 U.S. 398 (1981) (Utah notification law upheld without judicial bypass procedure); *Planned Parenthood Ass'n* v. *Ashcroft*, 462 U.S. 476 (1983) (Missouri consent law upheld with judicial bypass procedure); *City of Akron* v. *Akron Center for Reproductive Health*, 462 U.S. 416 (1983) (*Akron* I—Ohio consent law with limited judicial bypass procedure held unconstitutional); *Thornburgh* v. *American College of Obsetetricians and Gynecologists*, 476 U.S. 747 (1986) (Pennsylvania consent law with judicial bypass procedure remanded); *Hartigan* v. *Zbaraz*, 763 F.2d 1532 (7th Cir. 1985) *aff'd mem 108 S. Ct. 479 (1987) (aff'd* without opinion *per curiam*) (Illinois notification law with judicial bypass procedure held unconstitutional by Court's split decision)